

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CLERK OF COURT  
OFFICE

SEP 12 2 3:15

05 - 11660 NG  
AVERILL BARKHOUSE and  
JODY BARKHOUSE,

Plaintiffs,

MAGISTRATE JUDGE *S. J. [Signature]*

v.

Civil Action No. \_\_\_\_\_

DELTA AIR LINES, INC. and  
GLOBEGROUND NORTH  
AMERICA LLC,

Defendants.

RECEIPT # *66181*  
AMOUNT \$ *250*  
SUMMONS ISSUED *N/A*  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPTY. CLK. *[Signature]*  
DATE *8/10/05*

NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Pursuant to 28 U.S.C. § 1441 et seq. and LR 81.1 Delta Air Lines, Inc. ("Delta") hereby gives notice that it now removes this matter from the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts for Suffolk County to the United States District Court for the District of Massachusetts. This action is subject to removal pursuant to the provisions of 28 U.S.C. §1441 et seq. for the following reasons:

1. On April 29, 2005 the plaintiffs (collectively "Barkhouse") brought a civil action against Delta and GlobeGround North America LLC ("GlobeGround") styled *Averill Barkhouse, et al v. Delta Air Lines, Inc., et al*, bearing Civil Action No. 05-1699 ("the State Court Action"). A true copy of the Complaint in that case is attached hereto and marked Exhibit A.
2. The State Court Action is one over which this Court has original jurisdiction and is removable pursuant to 28 U.S.C. §1441, in that it is a civil action between

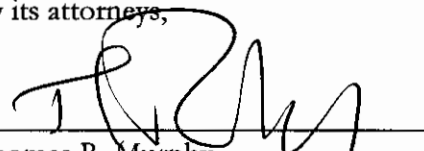
citizens of a foreign nation and another state, and neither defendant is a citizen of the state in which the action is brought.

3. In paragraphs 1 and 2 of the Complaint, Barkhouse alleges the plaintiffs are citizens of Upper Rawdon, Nova Scotia, Canada. In paragraphs 3 and 4 Barkhouse avers that Delta and GlobeGround are Delaware corporations.
4. Liability questions aside, Delta believes that the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs, the amount in controversy required for removal by 28 U.S.C. §1332 (a).
5. Barkhouse served Delta with process, through its agent for service, Corporation Service Company, on August 1, 2005 but it has yet to file an Answer or otherwise respond to the State Court Action.
6. Barkhouse served GlobeGround with process, through its agent for service, Corporation Service Company, on August 1, 2005 but it has yet to file an Answer or otherwise respond to the State Court Action.
7. Counsel for GlobeGround has given her assent to remove this matter, and her Consent to Removal is attached hereto and marked Exhibit B.
8. The Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, 3014, T.S. No. 876 (1934), reprinted in note following 49 U.S.C. § 40105 (the "Warsaw Convention") support the defendants' preemption defense to Barkhouse's claims, the notion that those claims arise under federal common law, and that the Complaint raises a cause of action under the Constitution, federal statute, or international treaty:
9. Promptly after filing this Notice of Removal of the State Court action, Delta will give written notice of such filing to counsel for Barkhouse, will file a copy of the

Notice of Removal with the Clerk of the State Court, and will proceed no further unless and until the case is remanded.

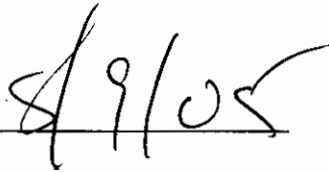
WHEREFORE, Delta Air Lines, Inc. respectfully requests that this case be removed from the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts for Suffolk County to the United States District Court for the District of Massachusetts.

Respectfully submitted,  
Delta Air Lines, Inc.  
By its attorneys,

A handwritten signature in black ink, appearing to read 'T. R. Murphy', written over a horizontal line.

Thomas R. Murphy  
BBO No. 546759  
Giarrusso, Norton, Cooley & McGlone, P.C.  
Marina Bay  
308 Victory Road  
Quincy, MA 02171  
Telephone: 617-770-2900

Dated: \_\_\_\_\_

A handwritten date '8/9/05' in black ink, written over a horizontal line.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Averill Barkhouse v. Delta Airlines Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N.A.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas R. MurphyADDRESS Giarrusso, Norton, Cooley & McCullone  
308 Victory Rd. Marina Bay, Quincy MA 02171TELEPHONE NO. 617-770-2900

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS****DEFENDANTS**

(b) County of Residence of First Listed Plaintiff Nova Scotia  
(EXCEPT IN U.S. PLAINTIFF CASES) Canada

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                       |                                       |   |                                |                                |
|---|---------------------------------------|---------------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State                   | PTF <input type="checkbox"/> 1        | DEF <input type="checkbox"/> 1        | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5     | <input type="checkbox"/> 5     |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6     |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1441

Brief description of cause:

Removal of Personal Injury Claim**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



COPY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

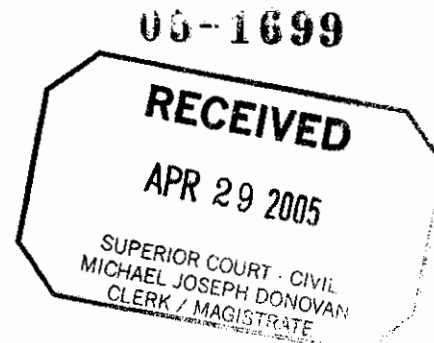
AVERILL BARKHOUSE and JODY  
BARKHOUSE

Plaintiff

v.

DELTA AIRLINES, INC. and GLOBE  
GROUND NORTH AMERICA LLC

Defendants



COMPLAINT

Parties

1. The plaintiff, Averill Barkhouse, is a natural person who currently resides at 3849 Highway 14, Upper Rawdon, Nova Scotia, Canada.
2. The plaintiff, Jody Barkhouse, is a natural person who currently resides at 3849 Highway 14, Upper Rawdon, Nova Scotia, Canada.
3. The defendant, Delta Air Lines, Inc. ("Delta") is a Delaware Corporation with its principal place of business at 1030 Delta Blvd Dept. 852 Atlanta, GA, 30320. Delta's resident agent in Massachusetts is Corporation Service Company, 84 State Street, Boston, MA 02109.
4. The defendant, GlobeGround North America LLC ("GlobeGround"), is a Delaware Corporation with its principal place of business at 111 Great Neck Road, Great Neck, MA 11022-0000. GlobeGround's resident agent is CT Corporation System, 101 Federal Street, Boston, MA 02110.

Facts

5. On May 3, 2003 Averill Barkhouse and Jody Barkhouse were passengers on Delta flight DL2070 originating in Atlanta, Georgia with a destination of Boston, Massachusetts.

6. Flight DL2070 was the first segment of a trip with the final destination of Halifax, Nova Scotia. The lack of a direct flight from Atlanta required the Barkhouse's to change of planes in Boston.
7. Averill Barkhouse was a quadriplegic, traveled with a custom motorized wheelchair and required assistance in embarking and disembarking the aircraft.
8. Upon information and belief GlobeGround was contracted by Delta airlines to provide Delta with certain ground based services at Boston's Logan International Airport, including, inter alia, assistance in transferring physically disabled passengers to and from Delta's aircraft.
9. Delta and GlobeGround were on notice of Averill Barkhouse's medical condition and his need for assistance embarking and disembarking Delta's aircraft in Boston.
10. GlobeGround's employees failed to use ordinary care in transferring Averill Barkhouse from his seat on Delta flight DL2070 to a wheelchair in Boston.
11. As a result of the negligence of GlobeGround's employees, Averill Barkhouse suffered serious personal injuries, including but not limited to a fracture to his left hip.

**COUNT I – NEGLIGENCE – (Averill Barkhouse against all Defendants)**

12. The plaintiff, Averill Barkhouse repeats and realleges the allegations contained in paragraphs 1 through 11 and incorporates them as if fully set forth herein.
13. Each defendant owed the plaintiff a duty of care in the transfer of Averill Barkhouse from the Delta aircraft to the terminal.
14. As a direct and proximate result of the negligence of each defendant plaintiff, Averill Barkhouse was caused to suffer serious debilitating physical injuries including mental and physical pain.

WHEREFORE, the Plaintiff, Averill Barkhouse, demands judgment against the defendants, jointly and severally, for the damages herein described, in a full and just amount, together with interest and costs.

**COUNT II – LOSS OF CONSORTIUM – (Jody Barkhouse against all Defendants)**

15. The plaintiff, Jody Barkhouse repeats and realleges the allegations contained in paragraphs 1 through 11 and incorporates them as if fully set forth herein.
16. Each defendant owed the plaintiff a duty of care in the transfer of Averill Barkhouse from the Delta aircraft to the terminal.
17. As a direct and proximate result of the negligence of each defendant plaintiff, Jody Barkhouse Averill Barkhouse was caused to suffer a loss of consortium, company,

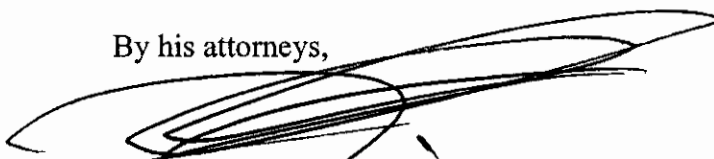
society, and affection of Averill Barkhouse due to the serious debilitating physical injuries he suffered due to the negligence of the defendants.

WHEREFORE, the Plaintiff, Jody Barkhouse, demands judgment against the defendants, jointly and severally, for the damages herein described, in a full and just amount, together with interest and costs.

### **JURY CLAIM**

The plaintiff hereby requests a trial by jury.

By his attorneys,



Kevin C. Cain #550055  
Peabody & Arnold LLP  
30 Rowes Wharf  
Boston, MA 02110  
(617) 951-2100

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UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

AVERILL BARKHOUSE AND  
JODY BARKHOUSE,  
Plaintiffs,

v.

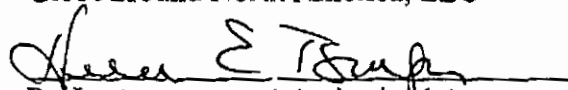
DELTA AIR LINES and GLOBEGROUND  
NORTH AMERICA LLC,  
Defendants.

CIVIL ACTION NO.

CONSENT TO REMOVAL

Defendant, GlobeGround North America, LLC, with full reservation of all rights and defenses, including but not limited to lack of personal jurisdiction, insufficiency of process, insufficiency of service of process, and improper venue, through its duly authorized representative, hereby joins in the Notice of Removal filed herein on August 9<sup>th</sup>, 2005, and further consents to removal of the above-captioned action to this Court as if defendant had executed the aforementioned Notice as a joint petitioner.

Respectfully Submitted,  
GlobeGround North America, LLC



By Its Attorney and Authorized Agent,  
Helen E. Tsingos, BBO#62962  
Wilson, Elser, Moskowitz, Edelman & Dicker,  
LLP  
155 Federal Street  
Boston, MA 02110  
(617) 422-5300

**CERTIFICATE OF SERVICE**

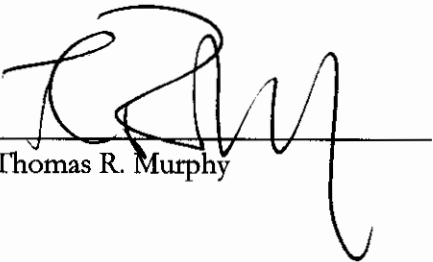
I, Thomas R. Murphy, attorney for the Delta Air Lines, Inc., hereby certify that on this 9<sup>th</sup> day of August, 2005, I served a copy of the within

NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

on counsel of record by mailing a copy thereof by class-mail, postage prepaid, to:

Kevin C. Cain, Esquire  
Peabody & Arnold, LLP  
30 Rowes Wharf  
Boston, MA 02110

Helen E. Tsingos, Esquire  
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP  
155 Federal Street  
Boston, MA 02110

  
Thomas R. Murphy